

SENATE BILL 543  
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 8,  
Chapter 3; Title 35 and Title 47, relative to judicial  
sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 35, Chapter 5, Part 1, is amended by  
adding the following as a new section thereto:

35-5-116.

(a) Before a sale of land to foreclose a deed of trust, mortgage or other lien  
securing the payment of money or other thing of value or under judicial orders or  
process, notice of default and intent to foreclose shall be sent by certified or registered  
mail to the debtor, co-debtors and guarantors of the parcels of property at the address of  
the property and at the last known residence or other address, if any, actually received  
by the lender of any such debtor, co-debtor or guarantor. Notice of such default and  
intent to foreclose shall also be sent by certified or registered mail to any lien holder of  
record including mechanics and materialmen. Such notices shall be sent at least ten  
(10) days prior to the first publication of notice in a newspaper.

(b) The notice of default and intent to foreclose shall contain at least the  
following information:

- (1) Name of the debtor(s);
- (2) Address of property or other means of clearly identifying the property  
such as a legal description of the property;
- (3) The name, address and telephone number of the foreclosing trustee,  
or such trustee's agent, where the trustee (or agent) may be contacted and may

be served with process. If the trustee or agent is not a resident of Tennessee, they must appoint a resident agent or the secretary of state for service of process;

(4) The name, address, telephone number, and contact person or department where the lender (beneficiary) can be contacted for obtaining:

(A) The payoff amount on the debt principally secured by the property;

(B) The per diem interest; and

(C) Collection expense up until and including the day established for the foreclosure sale;

(5) If the property is also collateral for other debts, the notice shall state whether or not the property will be released for the payment in full of the debt principally secured by the property, including per diem interest and foreclosure expenses, as provided above;

(6) Any federal tax liens actually known to the lender;

(7) Any state tax liens actually known to the lender;

(8) Any environmental liens recorded in any register's office in which all or any part of the property is located that are actually known to the lender;

(9) The name and address in Tennessee of the lender, or an agent for the service of process in Tennessee;

(10) The planned date and time of the foreclosure, together with a statement of the location where the foreclosure will be conducted;

(11) A statement that the sale may be adjourned to another time and location as announced at the sale without additional publication if within one hundred twenty (120) days of the original foreclosure date;

(12) A notice that no warranty as to any matter related to the title is being given unless otherwise expressly stated in the form of notice; and

(13) A statement that notice has been filed with any centralized registry that may be created pursuant to section 7 and whether any additional notices will be published prior to the date of the sale set forth in the notice.

SECTION 2. Tennessee Code Annotated, Section 35-5-114, is amended by designating the existing language as subsection (a) and adding the following language as subsections (b) and (c):

(b) Such trustee, or agent of such trustee, shall have an office in the state or shall have a registered agent, which may include the secretary of state, for service of process within the state.

(c) The foreclosing trustee or such trustee's agent shall sign an affidavit attesting elements of the sale including date, time, location, approximate number of bidders if any, and number of bids made. Such affidavit shall be filed in the register of deeds office in the county where the property is located.

SECTION 3. Tennessee Code Annotated, Section 35-5-101(b), is amended by deleting the language "twenty (20) days" and substituting instead the language "thirty (30) days".

SECTION 4. Tennessee Code Annotated, Section 35-5-109, is amended by deleting such section in its entirety and substituting instead the following:

(a) The sale in all these cases shall be made between the hours of eight-thirty a.m. (8:30 a.m.) and six-thirty p.m. (6:30 p.m.) on any day but Sunday or a legal holiday. Such day and time shall be fixed in the notice and advertisement.

(b) The sale shall be conducted in any county where any part of the property is located so long as it is disclosed in the published notice.

(c)

(1) The sale may be postponed one (1) or more times to a time, date and place certain not to exceed a total of one hundred twenty (120) days from the original sale date without additional publication or notice to the borrower or other parties provided disclosure is given at the scheduled foreclosure sale.

(2) A sale held more than one hundred twenty (120) days after the date of the original sale was scheduled shall require renote and republication of the sale to all interested parties.

SECTION 5. Tennessee Code Annotated, Section 35-5-108, is amended by deleting the language “ten o’clock a.m. (10:00 a.m.)” and substituting instead the language “eight-thirty a.m. (8:30 a.m.)”.

SECTION 6. Tennessee Code Annotated, Title 35, Chapter 5, Part 1, is amended by adding the following as a new section thereto:

35-5-117.

A certified transcript of a sale transaction under this chapter, or a recording of such sale, shall constitute prima facie evidence as to the regular completion of the sale.

SECTION 7. Tennessee Code Annotated, Title 35, Chapter 5, Part 1, is amended by adding the following as a new section thereto:

35-5-118.

(a) The secretary of state shall create an online central registry for posting of foreclosure notices. Such filing shall not substitute for publication in a local newspaper; however, once the registry is operational the number of publications in a newspaper required under § 35-5-101 shall be reduced from three (3) to one (1).

(b) The secretary of state is authorized to promulgate rules and regulations as the secretary of state may deem necessary to effectuate the purposes of this section including assessment of a reasonable fee for posting such notices. All such rules and

regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. This act shall take effect July 1, 2005, the public welfare requiring it.